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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,836	12/24/2003	Hirokazu Sakai	247085US0	1132
22850	7590	12/19/2008		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER				
VENKAT, JYOTHSNA A				
ART UNIT		PAPER NUMBER		
1619				
NOTIFICATION DATE		DELIVERY MODE		
12/19/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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### Office Action Summary

**Application No.**

10/743,836

**Applicant(s)**

SAKAI ET AL.

**Examiner**

JYOTHSNA A. VENKAT

**Art Unit**

1619

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/21/08 has been entered.

Claims 1-21 are currently examined in the application. Receipt is also acknowledged of declaration under 1.132 filed on 11/21/08. Declaration is persuasive to overcome the rejection of claims 1-21 under the combination of patent '953 and '705.

Restriction between the species is withdrawn. In view of new art, prosecution is resumed.

### ***Claim Rejections - 35 USC § 103***

Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of U. S. Patents 5,683,685 ('685) and 6,685, 953 ('953).

*The instant application is claiming hair cleansing composition comprising:*

- 1. Amphipathic amide lipid of formula 1*
- 2. Anionic surfactant*
- 3. Organic or inorganic acid*
- 4. Silicone derivatives or cationic polymers (claim 5)*
- 5. Nonionic or amphoteric surfactant (claim 6)*

Patent '685 t at col.7, 11 15-21 teaches that the surfactant can be used singly or combination of two or more and the weight percent disclosed in the patent is within the weight

percent claimed in the instant application and also there is overlap of ranges for the weight percent claimed in claims 14 and 17. Patent '685 at col.5, ll 8- 43 teaches claimed anionic surfactant and this includes claimed polyoxyalkylene alkyl ether sulfates and alkyl sulfates and teaches alkane sulfonates, olefin sulfonates and N-acyl glutamates at col.3, ll 55-66 and N-acyl taurinic acid salts at col.6, ll 10-18 claimed in claim 3 and teaches claimed amphoteric surfactants at col.3, ll 46-54. Patent '685 teaches claimed lactic acid, glycolic acid and salts belonging to ingredient 3 at col.11, ll 56-63 and the weight percent at paragraph bridging cols. 11-12. The weight percent claimed is within the weight percent taught by patent. Patent at col.11, ll 48-55 teaches claimed pH range. Patent at col. 7, line 22 through col. 11, line 40 teaches conditioning agent and this includes claimed oils, silicones and cationic polymers. Patent at col.8, ll 9-16 teaches the weight percent of oils and at col. 11, ll 40-46 teaches weight percent of polymers and this includes claimed silicones and cationic polymers. See also examples. All the examples teach adjusting the pH level of the compositions. Patent at col.7 teaches oils, fatty alcohols. These substances are moisturizers. **Moisturizers** are complex mixtures of chemical agents specially designed to make the external layers of the skin (epidermis) softer and more pliable, by increasing its hydration ( water content) by reducing evaporation. The difference between the patent and the instant application is patent does not teach the claimed ingredient 1.

However patent '953 teaches claimed ingredient . In patent '953, see the abstract, and see col.2, ll 129 for the claimed diamide and see col.s 3-6 for species (formula F). Patent '953 at col.7, ll 4-9 teaches that the diamide derivatives are useful in improving the water retention capacity and barrier function of horny layer. Patent at col.8, ll 1-5 teaches using the diamide in hair cosmetic applications and using in the form of shampoo, Conditioner etc. Patent at col.8, ll

6-30 teaches adding anionic surfactants , amphoteric surfactant and non-ionic surfactants and also oils.

Accordingly it would be obvious to one of ordinary skill in the art at the time the invention was made to prepare the compositions of patent '685 using anionic surfactant, organic acid, amphoteric surfactant, silicone derivatives or cationic polymers and add the diamide compound since patent '685 teaches adding oils ( moisturizers) and patent '953 teaches the diamide compound to be useful for improving the water retention ( moisturizing property). One of ordinary skill in the art would be motivated to diamide compound of patent '953 into the compositions of '685 with the reasonable expectation of success that the compositions which has the diamide provide moisturizing feel and silkiness to the hair and adding cationic polymers and silicone derivatives provide conditioning property to the hair and adding surfactant provide cleansing actions. Thus the compositions not only cleanse the hair but also provide moisturizing and conditioning properties to the hair. It is beneficial to the consumer having single product that provides cleansing, conditioning and moisturizing property to hair. This is a prima facie case of obviousness.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JYOTHSNA A VENKAT /  
Primary Examiner, Art Unit 1619